jority of the judges was in harmony with this commercial test of enemy character.

In *Daimler Co.* v. *Continental Tyre and Rubber Co.* [1916], 2 A. C. 307, the House of Lords was asked to go a step farther along the same line, and hold an English corporation to be an alien enemy because substantially all its shares were held by German subjects and its directors were all German subjects, three-fourths of them resident in Germany when war was declared. The Court of Appeal had held that it was not an alien enemy. In the House of Lords, Lord HALSBURY contended that it was an enemy, the corporation being substantially a mere partnership with a limited liability, all the partners presumably residing in enemy territory. He thought that "the unlawfulness of trading with the enemy could not be excused by the ingenuity of the means adopted." Lord ATKINSON thought an English Company might well be an alien enemy if in fact it could be shown that its real business activity was in enemy territory, but that the record was silent on that point. Lord SHAW dissented from both these positions, saying that since no dividends or assets could be paid to enemy shareholders, "and all trading with these shareholders * * being interpelled, there is no principle of law which would, in my humble opinion, justify the incongruity of dominating or regarding the Company itself as enemy either in character or in fact." Lord PARKER, with whom concurred Lords MERSEY and KINNEAR, took the position that enemy character could not be given to the company "merely because enemy shareholders may after the war become entitled to their proper share of the profits of trading," but he thought it might assume enemy character "if its agents or the persons in *de facto* control of its affairs, whether authorized or not, are resident in an enemy country, or, wherever resident, are adhering to the enemy or taking instructions from or acting under control of enemies." He refused to admit, however, that the character of individual shareholders could affect the character of the Company; and on this point Lord PARMOOR was in accord.

The problems here suggested are equally relevant to conditions in this country. Our own TRADING WITH THE ENEMY ACT, so far as corporations are concerned, does not include companies incorporated in the United States. However, the illegality of trading with the enemy was recognized at common law, and the statute does not abrogate or narrow the common law principles, but only makes special regulations and provides special penalties for certain classes of acts of this character. The war has brought up a large number of cases in England involving both the common law and statutory rules relating to alien enemies, and in the controversies which are sure to arise here over trading with the enemy, these English cases are likely to prove of great practical value to American lawyers. E. R. S.

WHEN IS A PREFERENTIAL TRANSFER "REQUIRED" TO BE RECORDED?—The BANKRUPTCY ACT of 1898 (as amended in 1903 and 1910), after defining a preference, provides in § 60b that preferences made under certain circumstances may be recovered from the preferred creditor if the latter had "rea-

sonable cause to believe" that a preference was to be effected "at the time of the transfer * * * or of the recording or registering of the transfer if by law recording or registering thereof is required," such time being within four months before bankruptcy. Bankrupcty courts have for years been vexed with the question: When is a transfer "required" to be recorded under this provision of the Act? Various suggestions as to the meaning of the Act were made by the various Circuit Courts of Appeals, but the question was finally authoritatively decided—in part, at least—in 1916 in the case of *Carey* v. *Donohue,* 240 U. S. 430. This case decided that a transfer was not "required" to be recorded under the provisions of § 60 unless the requirement was (to quote from the opinion in that case) "for the protection of creditors, —the persons interested in the bankrupt estate, and in whose behalf, or in whose place, the trustee is entitled to act." The decision in *Carey* v. *Donohue* was that an Ohio statute requiring the recording of deeds of land in order to make them effective *as against subsequent bona fide purchasers* was not such a requirement as was meant by § 60, and, of course, the decision is authoritative only on that point. The decision has therefore left open the question whether a statute requiring the recording of a transfer in order to make it effective as against *any creditor* is sufficient to satisfy the provision of the statute, or whether the recording act must require the record in order to make the transfer valid as against *the particular kind of creditor,* who is in the particular case, represented by the trustee in bankruptcy. The Supreme Court of the United States has just decided, in *Martin* v. *Commercial National Bank,* 38 Sup. Ct. —, that it is the latter requirement that must be made.

In a comment on *Carey* v. *Donohue* (14 MICH. L. REV. 578, 581) it was said that the language of the court in that case "seems to indicate pretty clearly that if the local law requires recording as against *any* of the classes of persons referred to in § 47a (2) there is a 'requirement' under § 60. Under § 47a (2) the trustee is given 'the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings' on property in the custody, or coming into the custody of the bankruptcy court; as to property not in such custody, he has the 'rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied.' The Supreme Court* * * seems to indicate, without regard to any distinction as to the two classes of property referred to in § 47a (2), that if the local law requires recording as against any of the classes of creditors referred to in that section, recording is required under § 60." This interpretation of the decision in *Carey* v. *Donohue* was also made by the Circuit Court of Appeals for the Eighth Circuit in the case of *Bunch* v. *Maloney,* 233 Fed. 967, 147 C. C. A. (affirming *In re T. H. Bunch Commission Co.,* 225 Fed. 243), in which the court had under consideration an Arkansas statute which provided that unrecorded chattel mortgages were void as against subsequent purchasers and lien creditors. Referring to the decision in *Carey* v. *Donohue,* the Court said: "Two views may be taken of the construction given by *Carey* v. *Donohue* to the recording requirement clause of § 60b: First, that it is for the benefit of creditors generally, because their rights are the concern of bankruptcy proceedings, but

does not embrace those cases in which the requirement is in the interest of persons outside the purview of the BANKRUPTCY ACT. Second, that as to the creditors themselves the clause picks up and adopts all the substantive and procedural limitations of the construction of the statute prescribing the requirement; and if in local practice creditors of a particular class, like general creditors, could not invoke the failure to record, a corresponding disability rests upon the trustee in bankruptcy." After discussing the result sought to be attained by this section of the BANKRUPTCY ACT, namely, the striking down of all secret liens, the court decided that the trustee in bankruptcy might "invoke the remedy of § 60b regardless of the local construction of the statute making a procedural distinction between creditors with a lien and those without." So also in the case of *Hawkins* v. *Dannenberg Co.*, 234 Fed. 752, Judge LAMBDIN of the District Court for the Second District of Georgia, though compelled to a contrary decision by the authority of *Martin* v. *Commercial National Bank*, 228 Fed. 651, 143 C. C. A. 173, stated his opinion that under the decision in *Carey* v. *Donohue*, a provision of the Georgia statute making unrecorded mortgages void *as against lien creditors only* was nevertheless a "requirement" of recording under § 60 of the BANKRUPTCY ACT. This is the same Georgia statute that was under consideration by the Supreme Court in the principal case.

To the contrary, however, are the decision of the Circuit Court of Appeals for the Eighth Circuit in *Martin* v. *Bank*, *supra* (affirmed by the Supreme Court of the United States in the principal case) and the case of *Emerson-Brantingham Implement Co.* v. *Lawson*, 237 Fed. 877, decided by the District Court for the Southern District of Iowa, in a case raised under the Iowa act providing for a recording of conditional sale contracts, and holding that the trustee in bankruptcy acquired no rights as against previously recorded conditional sale contract because the latter was "required" to be recorded *only as against lien creditors.*

The question seems now to be finally settled in such a manner as to leave little room for doubt, but it is unfortunate that the Act has been so framed as to make possible the result which has now finally been attained. As is said by the court in *Bunch* v. *Maloney*, *supra*, in arguing against the construction now adopted by the Supreme Court, "It is difficult to perceive much result of consequence in the amendment of 1910 of § 60b. Though twice amended for further effectiveness, it would be doubtful that the section, so construed, would accomplish anything of practical value." And the cogency of this argument seems obvious. It is not the lien creditor that requires protection, but the general creditor, and it is to be regretted that the Supreme Court, in choosing between two possible courses open to it, has again, as in *Carey* v. *Donohue*, taken the path that gives least power to the trustee in bankruptcy, and most protection to the preferred creditor. E. H.

JOY-RIDING, SIMPLE AND COMPOUND.—The wrongful use of another's automobile, even though accompanied by a trespassory taking, cannot, if followed by a return to the owner or an abandonment, be easily brought within the